

Item No. 11.1.13
Halifax Regional Council
July 23, 2013

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original signed by 
Richard Butts, Chief Administrative Officer

Original Signed by 
Mike Labrecque, Deputy Chief Administrative Officer

DATE: July 15, 2013

SUBJECT: Nova Centre Construction Timing / Statement of Provincial Interest

ORIGIN

This report originates with staff in response to a request from the developer of the Nova Centre.

LEGISLATIVE AUTHORITY

Municipal Government Act Section 193 and *HRM Charter* section 214.

RECOMMENDATIONS

It is recommended that Halifax Regional Council:

- 1) Authorize a request to the Province of Nova Scotia (the Province) for consideration of a Statement of Provincial Interest and the creation of an Interim Planning Area Order to facilitate the timely construction of the underground parts of the Nova Centre building located below the elevation of Argyle Street that may include two levels of underground parking and the commencement of the lowest floor of the convention centre;
- 2) Authorize the Chief Administrative Officer to execute an Indemnification and Release Agreement between HRM and Argyle Developments Inc. (the developer) to indemnify and release HRM from any liability attributable to HRM as a result of actions taken by the developer in response to the issuance of a Statement of Provincial Interest and Interim Planning Area Order as described in this report; and
- 3) Subject to the issuance of a Statement of Provincial Interest and the creation of an Interim Planning Area Order, authorize staff to enter into negotiations to complete an encroachment license agreement between HRM and the developer for the use of lands under the Grafton Street right of way and authorize the Mayor and the Municipal Clerk to execute such an agreement.

BACKGROUND

Argyle Developments Inc. is developing the Nova Centre complex in downtown Halifax, on the blocks bounded by Argyle, Prince, Market, and Sackville Streets. It includes a publically sponsored convention centre, retail uses, office space and a hotel. The project has been identified by HRM, the Province and the federal government as an important catalyst to the economic success of downtown Halifax and the Province. The convention centre component of the project is funded by all three levels of government but no public funds have been expended on the building to date.

The design of the Nova Centre has evolved over time. The original building had the convention centre located underground, extending under Grafton Street. This design is specifically allowed for in the Downtown Halifax Secondary Municipal Planning Strategy (MPS) and Downtown Halifax Land Use By-law (LUB) (Attachment A). However, the building design has recently changed, notably with one of the convention centre floors now extending above the Grafton Street right of way. Based on recent discussions with the developer, other changes to the building designs may include towers that are larger but not taller than those which were originally envisioned. Parts of these changes originate from a series of public consultation sessions that occurred around the province from July to early December 2012. Consequently, Argyle Developments needs to submit applications to amend the MPS and the LUB and subsequently obtain Site Plan Approval for the revised design. This process could take approximately eight months. The developer's original intent was to submit these applications immediately following the public consultation. However, the design of the new building has proven to be technically challenging (Attachment B). While a completed application for these planning processes is expected shortly, the application had not been received at the time of the preparation of this report.

While Argyle Developments has been preparing a new building design, it has been excavating the site in order to accommodate a construction schedule that leads to opening the convention centre in January 2016. This work will be completed on or shortly after July 31, 2013. The developer has indicated that construction must continue immediately following excavation and site preparation in order to remain on schedule. However, under current municipal regulations, no further activity is allowed in advance of construction permits. These permits cannot be issued until the above referenced MPS/LUB amendments and Site Plan Approval processes are completed. It is not possible for the developer to secure these planning approvals before the conclusion of site preparation at the end of July 2013. Without intervention, meaningful on-site activity will cease upon completion of excavation and site preparation for a considerable amount of time. The developer has indicated that discontinuance of the construction schedule places the overall completion date of the project in jeopardy.

Argyle Developments has approached HRM and requested alternatives be instituted that could allow construction of the underground parts of the building below the elevation of Argyle Street in advance of the MPS/LUB amendments and Site Plan Approval process. This may include two levels of underground parking and the commencement of the lowest level of the convention centre.

DISCUSSION

In response to the developer's request, staff considered a full range of alternative approaches within the *HRM Charter* and *Municipal Government Act* (MGA) that would allow limited construction of the below-grade parts of the Nova Centre to proceed within the time line identified by the developer and in accordance with an overall project completion date of January 2016. Based on this review, and after preliminary consultations with staff at the Province, it appears there is only one procedural alternative that meets the desired timelines and maintains the integrity of the municipal planning process for the above-grade portions of the building.

Statement of Provincial Interest / Interim Planning Area

Under the MGA, the authority exists for the Governor in Council to make a Statement of Provincial Interest as a regulation. The Minister of Service Nova Scotia and Municipal Relations (SNSMR) is authorized to establish, by Order, an Interim Planning Area for a prescribed area. The Order may be established under circumstances specified in subsection 214(3) of the *HRM Charter*.

In relation to the Nova Centre, a Statement of Provincial Interest could potentially require that the planning documents of Halifax Regional Municipality provide for:

- a) special planning policies and regulations for the construction of the below-grade portion of the Nova Centre; and,
- b) the timely construction and decision of the Development Officer/Design Review Committee with respect to the developer's approval application for the below-grade portion of the Nova Centre.

Preliminary discussions have taken place between HRM and the Province at the staff level and it is believed that an approach such as this would allow work on the underground portion of the project to continue without compromising the integrity of the Municipality's planning approval process. This report seeks Council's authority to submit a request to the Province for the issuance of a Statement of Provincial Interest and Interim Planning Area Order on this matter.

Risks and Implications

There are risks and implications associated with the adoption of a Statement of Provincial Interest and Interim Planning Area as described. Correspondingly, there are also risks and implications associated with not doing so.

The implications of pursuing a Statement of Provincial Interest and Interim Planning Area Order relate to proceeding with below-grade construction activity in advance of planning approvals for the above-grade portions of the building. Specifically, if the approvals do not reflect the building that is currently envisioned by the developer, parts of the underground structure may need to be removed and re-designed.

The implications of not pursuing a Statement of Provincial Interest and Interim Planning Area Order relate to a delay in the January 2016 overall project completion date. This could place preliminary bookings for events in the facility in jeopardy. It could also delay the occupancy for tenants in the leasable portions of the building and increase the risk to the commercial viability

of the project. It would also result in a significant risk to the Province's and HRM's perceived capacity to meet commitments to host events at this facility. In addition, the site would sit without meaningful construction activity for the time period required to implement any alternative solutions.

Recommendations

Development of the Nova Centre project is a complex and challenging endeavor that is unique in HRM. Periodic challenges to a project of this scope and complexity are inevitable and staff is working to generate solutions to these challenges as they arise.

Staff believes it is in the economic interest of HRM to request that the Province take action to allow limited construction of some below-grade parts of the Nova Centre to proceed. The risks associated with this approach can be mitigated through the measures outlined below. Furthermore, this approach does not prejudice full consideration of the design of the above-grade components of the project that would occur through the normal municipal planning approval process which includes a public information meeting and a public hearing.

Staff recommends that Council authorize a request to the Province for a Statement of Provincial Interest and Interim Planning Area Order with the following conditions:

- That the Order specify the construction of two levels of underground parking and one floor of the convention centre be built only below the elevation at any point along Argyle Street and that design of the structure be built to support the reinstatement of Grafton Street as this is an important consideration until such time as the Regional Council makes any decisions about its future;
- That there be an indemnity and release agreement that places the risks of proceeding with below-grade construction in advance of municipal approvals for the above-grade components of the building solely on the developer. This agreement would both indemnify HRM and the Province against any potential financial exposure from any person who is not a party to the agreement and prevent the developer from suing HRM and the Province as a result of any actions taken by the developer in response to the issuance of the Statement of Provincial Interest and Interim Planning Area Order; and
- That the agreement be signed prior to the issuance of the Statement of Provincial Interest and Interim Planning Area Order.

Should Council elect to proceed as recommended, approval of a permanent encroachment license agreement or the closure of Grafton Street and its sale to the developer would be required to allow the location of concrete structures below the Grafton Street right of way. This step in the process will be the subject of a future report to Council subsequent to the completion of the terms of the agreement.

FINANCIAL IMPLICATIONS

There are no financial implications directly associated with this report.

COMMUNITY ENGAGEMENT

No community engagement will occur pursuant to the establishment of the Statement of Provincial Interest and Interim Planning Area Order. Community Engagement will take place during the MPS and LUB amendment process associated with the approval of the above-grade portions of the building.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications directly associated with this report.

ALTERNATIVES

1. Council could direct staff to undertake amendments to the MPS and LUB solely for the underground parts of the Nova Centre under an expedited process. This is not recommended as this will not allow construction to commence in the timeframe that has been requested.
2. Council could refuse to request that the Province adopt a Statement of Provincial Interest and Interim Planning Area Order as well as require that applications for MPS and LUB amendments be made through their normal course. This is not recommended for the reasons outlined in this report.

ATTACHMENTS

Attachment A-Land Use By-law Appendix for the Publically-sponsored Convention Centre

Attachment B -Letter from Argyle Developments Inc., July 3, 2013

Attachment C -Letter from HRM, July 5, 2013

Attachment D-Letter from Argyle Developments Inc., July 12, 2013

If the report is released to the public, a copy can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or by Fax at 490-4208.

Report Prepared by: Steve Higgins, Executive Assistant, Office of the CAO, 490-2292
Richard Harvey, Acting Urban Design Project Manager, Planning and Infrastructure, 490-6495

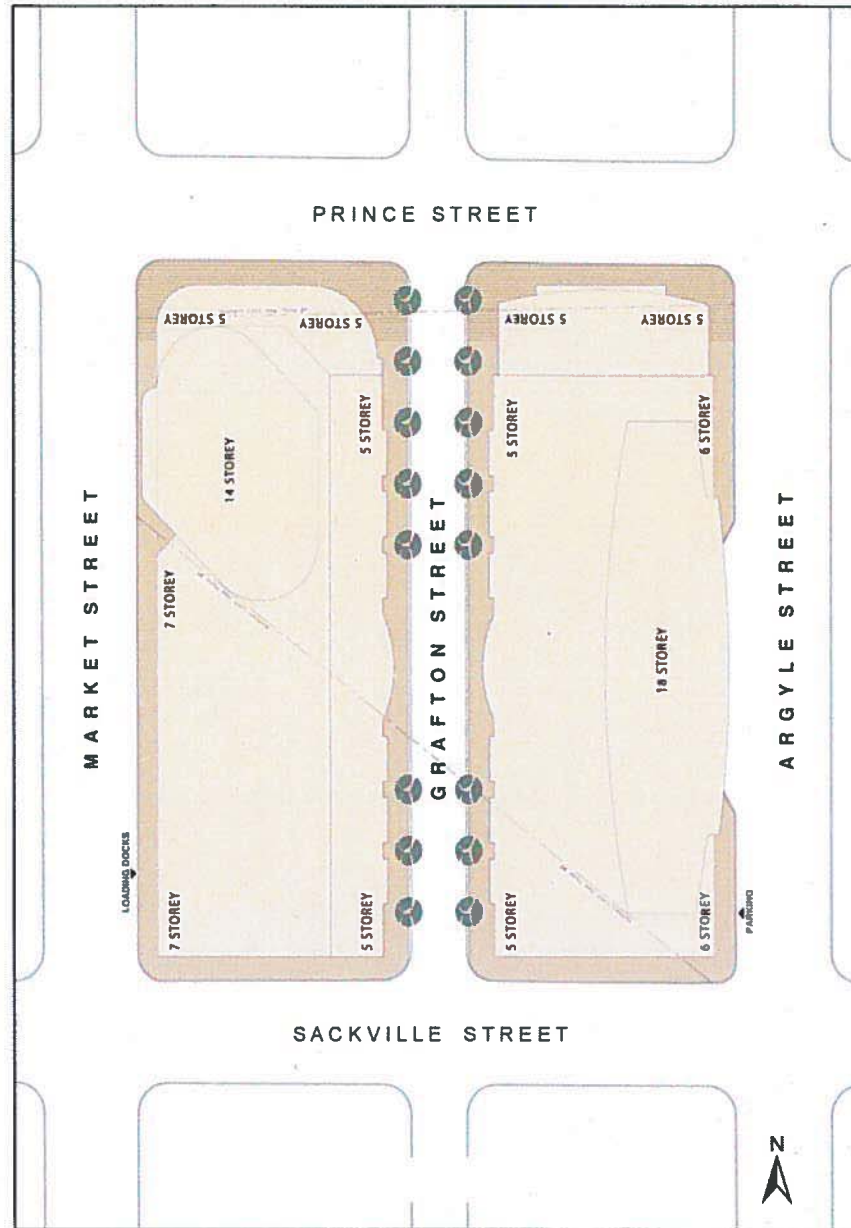
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Report Approved by: _____
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Report Approved by: _____
Jane Fraser, Director of Planning and Infrastructure, 490-7166

Attachment A

Appendix "B" Publically-Sponsored Convention Centre



Attachment B

ARGYLE

DEVELOPMENTS INC.

Mr. Richard Harvey
Urban Design Project Manager
Planning & Infrastructure
Halifax Regional Municipality
PO Box 1749
Halifax, Nova Scotia
B3J 3A5

July 3, 2013

Dear Mr. Harvey:

RE: NOVA CENTRE CONSTRUCTION

Further to our ongoing discussions, we are writing to update you on the status of the Nova Centre project and to seek your guidance with a matter of timing of construction.

The scale and complexity of this project is unprecedented in our Province's history. It is a huge undertaking that we believe will transform our downtown, serve as catalyst for new economic opportunities, and connect Nova Scotians to each other and the world.

We are committed to participating in the HRMbyDesign approval process. We will make the case for design changes that have arisen as a direct result of the public's input. We believe those who participated in the extensive consultation process agree that these changes make this project better, but also result in a more complex design.

Our challenge is one of timing. We are committed to delivering this project on time and are looking for a solution that allows us to continue the momentum on the site and to proceed with below grade work while the regulatory process unfolds.

The scheduling issues we face arise directly as result of the design changes to reflect the public input, and difficulty of advancing construction while accommodating the design changes. We wish to emphasize that we are not critical of the HRM development processes in themselves and have been satisfied with the professionalism and responsiveness of HRM staff in our dealings regarding the project.

At present, excavation of the site for the Nova Centre is proceeding on schedule, and we expect it to be completed by the end of July. Once excavation has been completed, the next step in the process would be pouring footings and building the underground structures.

We understand that in order to apply for a permit for footings and foundation, we first need to have a Development Permit in place. As a consequence of design changes emanating from input from the public consultation, our designers believe it is possible that we may require a change to the Land Use Bylaw, and Municipal Planning Strategy, and if that is the case, we understand this could potentially lengthen the overall approval process to upward of eight months.

ARGYLE

DEVELOPMENTS INC.

By way of a brief history: The original design for Nova Centre was submitted to the Province and the Municipality in July 2010 as a response to a Request for Proposals for a new Convention Centre. This original design was substantially consistent with the requirements of both the Land Use By-Law for Downtown Halifax and the Municipal Planning Strategy. Rank Inc. was required to respond to the RFP under a confidentiality agreement, and, accordingly, no public consultation was undertaken at that time. Rank retained convention centre experts and design consultants to develop the original design for Nova Centre. This design was approved by all three levels of Government.

At the time Rank was named as proponent to build the Convention Centre, it had the option to proceed with an application for a Development Agreement under the provisions of the then Municipal Planning Strategy. Instead, Rank agreed to obtain the necessary approvals for Nova Centre under the newly instigated HRMbyDesign planning process.

Over a period of six months, we undertook the most comprehensive public engagement process of any development project in Nova Scotia with twelve sessions of public consultations – seven taking place in HRM and five more held throughout the Province, ending in December 2012. We did not go through this simply as a matter of form. We listened carefully to the public and responded to its input. As a result of public input, the original plans for Nova Centre were essentially shelved and an entirely new design took shape to reflect the public's vision and aspirations. This put Rank back at the drawing table from a design perspective.

Typically, the redesign of a project of such scale and complexity, which includes underground parking, the Convention Centre, financial towers, and a hotel being integrated into an established and finely textured street grid pattern, would require 12-18 months to complete. However, through the extraordinary efforts of our design team, we will be in a position to file a complete application by July 15 2013.

We are seeking your guidance on an approach that will allow us to pour the footings and foundation and start work on the underground structure while simultaneously pursuing a site plan approval including design review committee consideration for the above ground portion of the project in accordance with the HRMbyDesign process. Ideally, we would like to be in a position to proceed with work on footings, foundations, the parking garage and the floor of the Convention Centre immediately upon completion of excavation. All of this construction would take place underground, and nothing would rise above the street level of Argyle Street.

We expect it will take approximately eight months for us to complete this work, which will allow time for the new design to simultaneously go through HRMbyDesign approval process. It is important that we maintain momentum of this project for various reasons, not the least being the occupancy date requirements of our tenancies. We do recognize the impact a project of this magnitude can have on the neighboring restaurants and businesses and we are striving to keep the duration of construction to a minimum. Further, the optics of a large undeveloped construction site remaining in the heart of the city for an extended period does not lend itself to the vibrancy of the surrounding restaurant and bar district. Weather is also an important consideration with construction, with the warmer months being key to making substantial headway.

In summary, we do not think it is in either the public interest or our own interest to have construction of the project stalled for a period of months. We understand, of course, that if we were permitted to proceed with the subgrade work this would not provide us with any assurance regarding the approval of the portion of the Nova

ARGYLE

DEVELOPMENTS INC.

Centre which would be placed above ground. This portion of the project would require site plan approval. As developer, we would entirely assume the risk associated with approval of this portion of the project.

The underground portion which we wish to continue to construct pending site plan approval for the above ground portion can be adapted to support buildings consistent with the mass and scale permitted in the Land Use By Law. This request arises as a result of our response to the public consultation process and our attempt to meet the public's aspirations and vision for this project.

We seek your support in finding a practical solution to maintain momentum and to keep this project moving, while also respecting the HRMbyDesign approval process.

Yours sincerely,

original signed

 Joséph Ramia

Attachment C



Richard Harvey, A/ Urban Design Project Manager
Planning & Infrastructure
Community Planning
PO Box 1749
Halifax, Nova Scotia, B3J 3A5

902-490-6495
harveyri@halifax.ca

July 5, 2013

Joseph Ramia
Argyle Street Developments Inc.
7071 Bayers Road, Suite 4007
Halifax, Nova Scotia
B3L 2C2

Dear Mr. Ramia,

Re: Nova Centre Construction Request

Thank you for your letter of July 3, 2013, which outlines your interest in constructing the below grade parts of the convention centre immediately following the completion of the excavation of the site, which you indicate will be at the end of this month. As you have highlighted in your letter, HRM cannot issue a development permit for this as planning and other approvals have not been issued for the building and await applications from you.

Over the past few weeks you have discussed with us a number of alternatives that could allow for the below grade construction to proceed, including measures that would involve the province. Further to this, we have noted that the province could enact a special allowance for this construction to occur by establishing an *interim planning area order*. There would however be considerable risk associated with this in that you would be proceeding without planning and other approvals, which may not be granted, and any foundation work could consequently need to be removed. This risk would be entirely yours, which we will require be formalized through an indemnity and release agreement.

As you are aware, aside from the matters that may be addressed by an interim planning area order, construction would continue to be the subject of other permits and approvals, including:

- an application for a permanent encroachment into Grafton Street or a street closure, as the case may be, either of which would be at the discretion of Regional Council;
- building approvals, which would be the subject of applications from you that would include plans and certifications sufficient to satisfy the building inspector with respect to compliance with the building code;
- water, sewer and site grading approvals; and
- driveway access approvals, subject to the submission of a traffic study from you that addresses matters such as the suitability of anticipated vehicular accesses.

As these are substantial matters, your request relating to an interim planning area order should only be made if you are in a position to submit complete and timely applications for all construction approvals.

On the basis of the information in this letter, please confirm that:

1. through HRM, that you are requesting the province establish an interim planning area order or similar measure that would allow for the issuance of a development permit for the below grade parts of the convention centre; and
2. you are in a position to submit applications for the permits and approvals that have been highlighted above in a manner that allows you proceed with your project pursuant to your schedule.

Please contact me if I may be any further assistance.

Yours truly,

original signed

Richard Harvey
A/ Urban Design Project Manager

Attachment D

ARGYLE
DEVELOPMENTS INC.

Mr. Richard Harvey
Urban Design Project Manager
Planning & Infrastructure
Halifax Regional Municipality
PO Box 1749
Halifax, Nova Scotia
B3J 3A5

July 12 2013

Dear Mr. Harvey:

RE: NOVA CENTRE CONSTRUCTION

I wish to confirm the contents of your letter of July 5 2013.

Per our discussions, I understand that construction would continue to be subject to other permits and approvals as outlined in your letter, and in this respect, I confirm that we will be in a position to complete and submit applications for these permits and approvals in a timely manner while below grade construction is underway.

Should you require any further confirmations in respect of this matter, please do not hesitate to contact me.

With best regards,

Yours sincerely,

original signed

✓ Joseph Ramia

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